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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,963	03/05/2002	Dennis E. Chapman	112056-0047	6338
24267	7590	08/24/2006	EXAMINER	
CESARI AND MCKENNA, LLP			NGUYEN, CINDY	
88 BLACK FALCON AVENUE			ART UNIT	
BOSTON, MA 02210			PAPER NUMBER	
			2161	

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,963

Applicant(s)

CHAPMAN, DENNIS E.

Examiner

Cindy Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/11/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/30/06 has been entered.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 4, 10, 19, 20, 21, 34, 39 and 44 provide for the use of "generating a point-in-time restoration", but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass.

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A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 4, 10, 19, 20, 21 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claims 4, 10, 14, 17, 20-22, 25, 28, 31, 32 and 44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims 4, 10, 14, 17, 22, 25, 28 are directed to an abstract model of a method, the steps is not used to produce the useful and tangible result.

The claims 20, 21, 31, 32 and 44 are directed to computer readable medium and electromagnetic signals propagating, the claims that recite nothing but the physical characteristics of a form of energy such as a electrical and signaling circuitry, Fiber Channel serial link topology, pre-se, and as such are nonstatutory natural phenomena, the claimed does not itself perform any useful, concrete and tangible result and thus does not fit within the definition of the machine.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 34-36, 38-41, 43 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Sekido (US 6311193).

Regarding claims 34, 39 and 44, Sekido discloses: a method, system and a computer readable medium for generating a point in time restoration of a database to an active file system (col. 3, lines 22-29, Sekido), the method comprising the steps of:

Storing a first snapshot, the first snapshot taken at a first time, the first snapshot including a set of data file (col. 6, lines 67 to col. 7, lines 15, Sekido);

storing a copy of a first log file, the copy of the first log file associated with the first snapshot, the copy of the first log file including information that had not yet been incorporated into the database files as of the first time; (col. 7, lines 20-44, Sekido);

storing a copy of a second log file, the copy of the second log file associated with a second snapshot taken at a second time subsequent to the first time, the copy of the second

log file including information received subsequent to the first time that had not yet been incorporated into the database files as of the second time (col. 8, lines 31-59, Sekido); and copying the first snapshot, the copy of the first log file, and the copy of the second log file to the active file system, to thereby restore at least a portion of the information received at the database subsequent to the first time without using the second snapshot (col. 14, lines 51 to col. 15, lines 67, Sekido).

Regarding claims 35 and 40, all the limitations of these claims have been noted in the rejection of claims 34 and 39 above, respectively. In addition, Sekido discloses: verifying that the first snapshot, the copy of the first log file, and the copy of the second log file are not corrupted and are valid (col. 9, lines 10-29, Sekido).

Regarding claims 36 and 441, all the limitations of these claims have been noted in the rejection of claims 34 and 39 above, respectively. In addition, Sekido discloses: wherein the step of copying further comprises: copying contents of a root inode associated with the snapshot to a root inode associated with the active file system (fig. 2 and corresponding text, Sekido).

Regarding claims 38 and 43, all the limitations of these claims have been noted in the rejection of claims 34 and 39 above, respectively. In addition, Sekido discloses: wherein the copy of the first log file and the copy of the second log file are stored in directories of the active file system, the directories also storing meta data associated with the snapshots (fig. 2 and corresponding text, Sekido).

1. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4-33, 37 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shen (US 6611850) in view of Sekido (US 6311193).

Regarding claims 4 and 20, Shen discloses: a method and a computer readable medium, including instructions executing on a computer for generating a point in time restoration of a set of database files and a set of associated log files to an active file system, the method comprising the steps of : selecting, by a user (client) a backup to restore therefrom (col. 13, lines 45-60, Shen), the backup comprising a snapshot of the file system including the set of database files (col. 13, lines 45 to col. 14, lines 46, Shen);

Shen didn't disclose: copies of the associated log files.

Sekido discloses: copies of the associated log files (col. 8, lines 30-58, Sekido).

The motivation being enable the system provided a creating process of creating a snapshot holding the contents of the file at a specific point in time, create a logical address tag block composed to the logical addresses for an number of logical blocks to hold the data updated then the system backup faster.

Verifying the selected backup for coherency (col. 15, lines 12-18, Shen);

Copying, in response to the backup being coherent, the snapshot of the set of database files to the active file system (col. 5, lines 51-67, Sekido); and

Copying, in response to the backup being coherent, the copies of the associated log files to the active file system (col. 5, lines 51-67, Sekido).

Regarding claims 5, 12 and 16, all the limitations of these claims have been noted in the rejection of claims 4, 10 and 14 above, respectively. However, Shen/Sekido disclose: wherein the step of copying the snapshot to the active file system further comprises the step of copying contents of a root inode associated with the snapshot to a root inode associated with the active file system (fig. 2 and corresponding text, Sekido).

Regarding claim 6, all the limitations of this claim have been noted in the rejection of claim 4 above. In addition, Shen /Sekido discloses: wherein the backup is selected from a set of backups associated with the active file system (col. 15, lines 45-60, Shen).

Regarding claim 17, Shen/Sekido discloses: a method for generating a backup of a set of database files associated with the database program and a set of associated log files, the method comprising the steps of: performing a snapshot operation on the set of database files (col. 8, lines 31-59, Sekido); and

Copying the set of log files to a directory associated with the backup (fig. 2 and corresponding text, Sekido).

Regarding claims 7, 13 and 15, 33, all the limitations of these claims have been noted in the rejection of claims 4, 10 and 14 and 17 above, respectively. In addition, Shen/Sekido/Lewis discloses wherein the method further comprises the step of renaming the copies of the associated log files to the set naming convention (col. 17, lines 29-49, Shen).

Regarding claim 8, all the limitations of this claim have been noted in the rejection of claim 4 above. In addition, Shen /Sekido discloses: wherein the database files and log files are associated with electronic mail message (col. 15, lines 40-47, Shen).

Regarding claim 9, all the limitations of this claim have been noted in the rejection of claim 4 above. In addition, Shen /Sekido discloses: wherein the set of associated log files further comprises data to be incorporated into the set of database files (fig. 2 and corresponding text, Sekido).

Regarding claims 10 and 21, all the limitations of these claims have been rejected as claim 4 above. In addition, Shen/Sekido discloses: Copying the copies of the log files associated with the set of snapshots created later in time than the selected snapshot to the active file system (col. 8, lines 31-59, Sekido).

Regarding claim 11, all the limitations of these claims have been noted in the rejection of claim 10 and 4 above. It is therefore rejected as set forth above.

Regarding claim 14, Shen/Sekido discloses: method for generating a point in time restoration from a set of backups, each of the set of backup comprising a snapshot and copies of a set of log files associated with the snapshot, the method comprising the steps of selecting

one of the set of backups to generate the point in time restoration therefrom (col. 13, lines 45 to col. 14, lines 46, Shen);

Copying the database files from the snapshot to an active file system (col. 14, lines 47-60, Shen); and

Copy the copies of the set of log files to the active file system (fig. 2 and corresponding text, Sekido).

Regarding claim 18, all the limitations of this claim have been noted in the rejection of claim 17 above. In addition, Shen/Sekido discloses: wherein the method further comprises the step of validating a snapshot generated by the snapshot operation (col. 15, lines 10-35, Shen).

Regarding claim 19, all the limitations of this claim have been noted in the rejection of claim 18 above. In addition, Shen /Sekido discloses: wherein the method further comprises the step of marking, in response to a successful validation of the snapshot, the snapshot as a backup snapshot (col. 11, lines 15-31, Sekido).

Regarding claims 22, 25, 28, 30-32, Shen/Sekido discloses: a method, a file system, a computer readable media and electromagnetic signals propagating on a computer network comprising: rendering the file system coherent in preparation for generating the backup, to product a coherent file system (col. 13, lines 45 to col. 14, lines 45, Shen); creating a snapshot of the coherent file system, the snapshot created as a copy of a set of pointers to data (col. 8, lines 31-59, Sekido), the data stored in the coherent file system (col. 14, lines 47 to col. 15, lines 18, Shen).

Regarding claims 24 and 27, all the limitations of these claims have been noted in the rejection of claims 22 and 25 above, respectively. In addition, Shen/Sekido discloses: maintaining the file system available for access by users while generating the backup (col. 13, lines 45 to col. 14, lines 45, Shen).

Regarding claims 23 and 26, all the limitations of these claims have been noted in the rejection of claims 22 and 25 above, respectively. In addition, Shen/Sekido discloses: incorporating a log file into the file system to render the file system coherent (fig. 2 and corresponding text, Sekido).

Regarding claims 37 and 42, all the limitations of these claims have been noted in the rejection of claims 34 and 39 above, respectively. In addition, Shen/Sekido discloses: wherein the step of copying further comprises: renaming the copy of the first log file and the copy of the second log file according to a naming convention of the database such that the first log file and the second log file are recognized by the database (col. 17, lines 29-49, Shen).

7. Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy Nguyen whose telephone number is 571-272-4025. The examiner can normally be reached on M-F: 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gaffin Jeffrey can be reached on 571-272-4160. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



Cindy Nguyen
July 5, 2006


FRANTZ COBY
PRIMARY EXAMINER